TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 426.

THE SCHOONER MARY H. BANKS, WILLIAM H. BODINE ET AL., CLAIMANTS, APPELLANTS,

vs.

THE STEAMER FALCON, THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL., CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED SEPTEMBER 26, 1872.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the United States court-house, in the city of Baltimore, on the first Monday in November, (being the sixth day of the same month,) in the year of our Lord one thousand eight hundred and seventy-one—present, the Honorable Hugh L. Bond, circuit judge; Archibald Sterling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk—among other were the following proceeding', to wit:

THE STEAMER FALCON, APPELLANT,
vs.
WILLIAM H. BODINE AND OTHERS.

Be it remembered that heretofore, to wit, on the 26th day of October, in the year of our Lord 1869, the owners and claimants of the steamer Falcon, by William Schley, esquire, their proctor, filed in the circuit court here a record from the district court of the United States in and for the Maryland district, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

2 At a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in September, (being the seventh day of the same month,) in the year of our Lord one thousand eight hundred and sixty-nine—present, the honorable William F. Giles, judge Maryland district; Archibald Sterling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk—among other were the following proceedings, to wit:

Libel.—Filed 5th July, 1867.

WILLIAM H. BODINE AND OTHERS
vs.
THE STEAMER FALCON. } Libel.

To the honorable William Fell Giles, judge of the district court of the United States for the district of Maryland.

The libel and complaint of William H. Bodine, N. Bright, George S. Martz, William Walton, Ludlam Matthews, George Shephard, William Bumm, Alexander McConnell, John E. Reinhart, George W. Middleton, and A. W. Haley, citizens of the State of Pennsylvania, against the steamer Falcon, her engines, boilers, machinery, tackle, apparel,
3 and other furniture, and all persons lawfully intervening for their interest in the same, in a cause of collision, civil and maritime, allege and propound as follows:

1. That before and at the time of the collision, hereinafter in the second article of this libel mentioned, your libellants were the owners and proprietors of a certain schooner, called the Mary H. Banks, of the burthen of 186 tons, or thereabouts, and which said schooner was, at the time aforesaid, duly registered and licensed for the coasting trade,

and engaged in commerce between ports of different States of the United States; and that the said schooner, at the time of the said collision, was in the prosecution of a voyage, in ballast, from the port of Boston, in the district of Massachusetts, to the port of Baltimore, in the district of Maryland.

2. That on Friday, the 21st of June, at about half-past one o'clock, a. m., (civil time,) whilst the said schooner was in the prosecution of the voyage aforesaid, in the first article above propounded, the said schooner being at the time tight, staunch, strong, and in every respect well manned, tackled, appareled, and appointed, and having the usual and necessary officers and crew on board, in proceeding up the Chesapeake Bay, on a course north-by-west, which was her proper course, a gentle breeze blowing from east-north-east, and the schooner moving at the rate of about six knots an hour, and holding steadily her course until the very moment of the collision, she was struck by the
4 steamer Falcon, Capt. Reed, belonging to the Baltimore and Charleston Railroad Steamboat Company, a vessel of 671 $\frac{9}{10}$ tons burthen, registered tonnage, and being at the time heavily laden with passengers and freight, and moving at the rate of at least ten knots an hour and apparently at a more rapid rate; and so great was the violence of the blow which, by the collision, the said steamer inflicted on the said schooner, that the latter was cut in twain, and sunk in about four minutes; and every article on board was entirely lost, the master and crew of the schooner barely escaping with their lives, and the man at the helm sustaining from the said collision the injury of a broken leg.

3. That the said schooner, at the time of the said collision, was under the command of her master, N. W. Haley, one of these libellants, whose watch it was, and who had been on deck for an hour and a half, and who was a careful and vigilant and experienced seaman; that the man at the helm was an attentive and experienced and skillful seaman, and the person, one of the crew, who was the lookout at the time, was vigilant, reliable, and attentive; that the said steamer was seen coming down the bay, the light from her mast-head and port-light being both visible, and her progress was steadily watched, as well by the master of the schooner and by the lookout, in expectation that, as she was nearing the schooner, whose course was steadily kept, the said steamer
5 would, in due time, change her course and pass in safety. It was with feelings of horror that it was seen by those on board the schooner that, although fearfully near, no attempt was made to change the course of the steamer, and it was impossible for those in charge of the schooner to make any movement or disposition of said vessel to save her from destruction.

4. That the said schooner, including her sails, tackel, apparel, and furniture, her ballast, and chronometer, was worth fully the sum of twelve thousand dollars.

5. That the master of said vessel, N. W. Haley, one of the libellants, lost, of his private property, the sum of three hundred dollars, which was in the cabin, together with various books and charts, and all his clothes except such as he had on his person at the time; and that his private loss, inclusive of said sum of money, amounts at least to the sum of seven hundred dollars.

6. That the mate of said vessel, Major D. Henderson, lost books and clothes to the value of one hundred dollars; and that Stephen Haley, the stewart, Denny T. Eareckson and Thomas Mister, seamen belonging of said schooner, lost their clothes and some other articles, to the amount, respectively, of about fifty dollars each.

7. That the said collision was occasioned by the fault of those in charge of said steamer, and was the result of unskilfulness, negligence, and of want of due care, and could and would have been avoided by observance of the plainest rules of navigation and the practice
6 of due regard to the rights and safety of persons navigating the high seas in sailing vessels.

8. That there was no unskillfulness, no negligence, no want of due care, nor any omission of duty, on the part of those in charge of said schooner.

9. That the said steamer Falcon is now lying in the port of Baltimore, and within the jurisdiction of this honorable court.

10. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellants pray that process, in due form of law, according to the course of this court, may issue against the said steamer Falcon, her engines, boilers, machinery, tackle, apparel, and other furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the damages sustained by your libellants, as owners of said schooner; and that said steamer may be condemned and sold to pay the same; and that the libellants may have such other and further relief as the nature of the case may require.

W'M SCHLEY,
Proctor for Libellants.

Sworn to before me this 3rd day of July, 1867, by N. W. Haley, one of the libellants.

ISAAC BROOKS, JR.,
U. S. Commissioner.

7 *Attachment.*

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

We command you that you attach, take, and safely keep steamer Falcon, her engines, boilers, machinery, tackle, apparel, and furniture, to answer the libel of William H. Bodine, N. Bright, George S. Marts, William Walton, Ludlam Matthews, George Shepherd, William Bunn, Alexander McConnell, John E. Reinhardt, George W. Middleton, and N. W. Haley, in a cause of collision, civil and maritime, and how you shall execute this precept you make known to us in our district court for the district aforesaid, at the United States court-room, in the city of Baltimore, on the first Tuesday of September next, and have you then and there this writ.

Witness the honorable William F. Giles, judge of our said district court, this first Tuesday of June, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued 5th day of July, 1867.

[SEAL.] JAMES W. CHEW, *Clerk.*

Marshal's return.

Atta'd July 5th 1867. Advertised. Released by stip, July 6th, '67.

W. BONIFANT,
U. S. Marshal.

8 *Stipulation.*

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered that, on this sixth day of July, in the year of our Lord one thousand eight hundred and sixty-seven, before me, Rob't. Lyon Rogers, a commissioner appointed by the circuit court of the United States for the fourth district, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," appear John W. Garrett and J. Randolph Mordecai, of Baltimore City and State of Maryland, of the district aforesaid, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound, in the sum of twenty-five thousand dollars, for the claimant of the steamship Falcon, unto William H. Bodine, Ludlam Matthews, and other owners of the schooner Mary H. Banks, to perform and fulfill the final order and decree of the said district court, and, in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit, in
9 and for the Maryland district, and in case of an appeal from such final order & decree of the said circuit court, then the final order and decree of the Supreme Court of the United State', in a certain cause now depending in the said district court, wherein the said William H. Bodine, Ludlam Matthews, and others, owners of the schooner Mary H. Banks, are libellants, and the claimants of the steamship Falcon are respondents; and unless they so do, they severally consent that execution shall issue against them, their heirs, executors, administrators, their goods, chattels, lands, and tenements, wheresoever found or to be found.

Acknowledged before—

ROB'T LYON ROGERS,
U. S. Commissioner.

Claim.

In district court U. S. for the district of Maryland.

WILLIAM H. BODINE
vs.
STEAMER FALCON.

J. Randolph Mordecai comes here into court and claims the said steamer Falcon, libelled at the suit of the said William H. Bodine and others, to be the property, along with her tackle, apparel, and furniture, of the Baltimore and Ohio Railroad Company, , the Georgia Railroad Company, the firm of Courtenay & Trenholm, N. P. Dutton, E. C. Reed, and Mordecai and Company, and prays that
10 by the decree of this honorable court the said steamer may be restored to the said claimants, the only true and bona fide owners thereof.

JNO. H. B. LATROBE,
Proctor for Claimants.

Sworn to in open court this 8th day of July, 1867.

JAMES W. CHEW,
Clk Dist. Court.

Answer.—Filed Sept. 3rd, 1867.

In the district court of the United States for the district of Maryland.

IN THE MATTER OF W. H. BODINE & OTHERS
vs.
STEAMER FALCON, &c. } In admiralty.

The answer of the Baltimore & Ohio Railroad Company, for itself and the South Carolina Railroad Company, the Georgia Railroad Company, Courtenay & Trenholm, N. P. Dutton, E. C. Read, and Mordecai and Company, to the libel filed by W'm H. Bodine & others against the steamer Falcon, of which these respondents are claimants, sets forth, alleges, and propounds:

1. To the first of the articles of the said libel these respondents answer and say, that of their knowledge they have no information as to the matters and things in this article alleged and propounded,
11 and that, so far as may be necessary for substantiating any matter in this connection, the libellants are called upon for proof according to law.

2. To the second of said articles of said libel these respondents answer and say, that it is true, as they have been informed and believe, that a collision between the steamer Falcon aforesaid, and the schooner Mary H. Banks, did take place on the morning of Friday, June 21st, 1867, between 1 and 2 o'clock a. m., civil time; but these respondents do not know what was the voyage in which the said schooner was engaged at the time thereof, nor whether she was tight, strong, staunch, and in every respect well manned, tackled, apparelled, and appointed, nor whether she had the usual and necessary officers and crew on board. These respondents admit that the said schooner was coming up the Chesapeake Bay, and they are not prepared to deny that the said schooner may have been on a proper course for the destination she had in view prior to the said collision; but these respondents deny most emphatically that at the time of said collision said schooner was on her proper course; but, on the contrary, these respondents distinctly allege and propound that at the time of the said collision the said schooner had changed her proper course so as to bring her immediately under the bows of the steamer Falcon aforesaid, broadside on, when it was beyond mortal prowess to prevent the collision which immediately ensued; and these respondents allege and propound the following
12 to be the facts as they actually occurred in this connection, and which they are prepared to shew by competent testimony.

That on the 21st day of June, 1867, at 50 minutes a. m., civil time, the said steamer being then under full speed, Point Lookout bearing west about three miles distant, and heading south by east quarter east, a moderate wind from the east-southeast blowing, the sky being clear and a light moonlight night, a vessel was seen from the deck of the steamer a point on the starboard bow, showing at first both lights, green and red, heading an opposite course to the steamer's; that upon approaching nearer the red light was shut out and the green one only seen: that the steamer was kept on her course intending to pass about a ship's length to the starboard of the vessel; that at 1 h. 10 m. a. m. they made her out as a large schooner steering up the bay, and beyond, as was believed, all risk of collision, the steamer being under command of the captain and second officer, both of whom were on the wheel-house, together with the man at the wheel; and a man was on the lookout,

walking the forecastle deck; then, when within easy hailing distance, the schooner put her helm hard a-port, altering her course from north by west half west to about northeast, shutting out her green and shewing her red light, and thus throwing herself under the steamer's bow; that those on board the steamer, seeing the collision was unavoidable, put the steamer's helm immediately hard a-port, and kept her a-going,
13 to clear the schooner's stern, if possible; that they did not succeed in doing so, but struck the schooner amidships, cutting half in two; that, after ascertaining the injury to the schooner, the steamer's engine was kept going at half speed to keep her up until the crew were rescued; when this was done the steamer backed clear, when the schooner immediately sunk; and these respondents further allege and propound that the man at the wheel on board of the schooner, after putting her helm hard aport, ran away from it and went forward, when he fell over the jib-sheet traveller and broke his leg.

And these respondents pray that the above statement of facts may be taken as a full answer to all such matters as are in the said libel alleged and propounded in regard to the said collision.

And these respondents admit that the said schooner collided with said steamer Falcon; that said steamer is of the tonnage of $671\frac{90}{100}$; that she was laden heavily with passengers and freight, and may have been going at the rate of ten knots an hour.

And these respondents further allege and propound that the said schooner was cut half in twain, and not altogether in twain as charged, a difference of small moment, however, inasmuch as it is admitted that she sank in consequence of the collision.

3. And these respondents further allege and propound, in answer to the third article of said libel, that they do not know whose watch it was on deck of said schooner at the time of the collision; but
14 they deny that the captain of said schooner was an attentive, experienced, and skillful seaman, or he would not have given the order to port his helm, which these respondents allege and propound that he did give just before the collision, and which was the cause of said collision; and they deny that the man at the helm of said schooner was a skillful, attentive, and experienced seaman, or he would not have ported his helm when destruction was the inevitable consequence of his doing so. And these respondents allege and propound that the lookout was not vigilant and attentive, and they say that had the steamer, as is alleged in the said libel, been seen, and her progress watched, the said collision would not have taken place unless it had been intentional. And these respondents further allege and propound that, had the two vessels aforesaid kept their respective courses, no collision would have taken place, and that the collision which did take place was due altogether to the change of the course of the schooner unnecessarily, and, as it proved, fatally.

4. These respondents further allege and propound that the said schooner, including her sails, tackle, apparel, and furniture, ballast, and chronometer, was not worth, as is alleged, the sum of $12,000, and was not worth more than half that sum, being an old vessel of some twelve or thirteen years of age.

5. And these respondents know nothing of the loss sustained by the captain of said schooner as alleged in this article, and leave the same, if need be, to be strictly proven.

15 6. And these respondents know nothing of the losses in this article alleged to have been sustained by Major D. Henderson, Stephen Haley, Denny T. Eareckson and Thomas Mister, but require strict proof thereof.

7. And these respondents further allege and propound that the fault which produced said collision was the result of the utter want of skill and knowledge on the part of those in charge of the said schooner, and that those on board the said steamer used all the diligence and care which was proper under the circumstances, and are not chargeable with the slightest negligence in the premises.

8. That these respondents allege and propound that there was an entire want of due care, accompanied with palpable omissions of duty on the part of those in charge of said schooner in connection with said collision, and the circumstances attending the same.

9. And these respondents admit that said steamer is within the jurisdiction of this honorable court.

10. And these respondents further allege and propound that the facts herein stated on their part are true, and they stand prepared to prove the same by competent evidence.

Wherefore they pray that they may be hence dismissed with their reasonable costs and charges herein unjustly sustained.

D. MORDECAI.

JOHN H. B. LATROBE,
Proctor for Defendants.

16 UNITED STATES OF AMERICA,
State of Maryland, District of Maryland:

On this third day of September, 1867, before me, the subscriber, a United States commissioner, personally appeared David Mordecai, one of the respondents, and a member of the firm of Mordecai & Company, and made oath according to law that the matters and things above set forth, so far as he knows them personally, are true, and, so far as they are stated upon the representation of others, he believes them to be true.

ROB. LYON ROGERS,
U. S. Commissioner.

Deposition of witness on the part of libellants, taken before Isaac Brooks, jr., United States Commissioner, at his office in the city of Baltimore.

DERMA EARECKSON, being by my clerk first carefully examined and cautioned, and duly sworn according to law, to testify the whole truth, and being examined on behalf of the libellants, makes oath, deposeth, and saith as follows, to wit:

I was a seaman, acting as lookout on the Mary H. Banks in the morning about one o'clock of the 21st of June, 1867, in the Chesapeake Bay, on a voyage from Boston to Baltimore, about five or six miles above Point Lookout, and in the middle of the Chesapeake Bay. I had
17 been on the lookout from 12 o'clock, in the captain's watch. I saw a light ahead, which I took to be a steamer's, at the distance of about four miles, and I thought it was a steamer down the bay. I saw her mast-head light and a port light. The schooner was heading north by west, and the wind was east-north-east. The schooner was proceeding at about five or six knots an hour, at a moderate breeze; it was starlight and clear weather. The sails of the schooner were set, and we had side-lights up forward in the rigging in the proper place; one was a green one, and the other was red. I was stationed forward, near the bow of the schooner, on the forecastle-deck, which gave me a good position to see anything that might occur. When I saw the steamer I re-

ported the fact to the captain, who said that he saw her. I could not see that the steamer changed her course, and she steered right down for us. Our schooner held her course. Our captain was on deck, and we had a man at the wheel, and the rest of the crew were below. The next thing was that I hailed the steamer as she was close to us, but no one answered. The steamer then struck us amidships, forward of the main-chains. The steamer was not backing, but going ahead. The man at the schooner's wheel had his leg broken. The captain and myself went to his assistance and took him on board the steamer, and all the schooner's crew followed. The schooner was forced about one hundred yards, and the steamer then backed, and the schooner shortly afterwards sank. Nothing was saved from the schooner but the lives of her people.

I lost all of my clothes except what I had on my back, and ten
18 dollars in money. I could not tell what the others lost, except that they certainly lost their clothes. The man at the wheel had five or six dollars in money down in the vessel, which was lost. We were carried on the steamer to Fortress Monroe, when the captain and the other men left, and I went on to Norfolk. I heard the captain of the steamer say, while I was on board of her, that he had seen our lights.

Cross-examined:

We did not change the schooner's course after the steamer had been observed. The schooner was struck on the port side, forward of the main-chains, in angular direction, the head of the steamer inclining towards the stern of the schooner. The schooner was forced ahead of the steamer, though the schooner itself was forced sternward about a hundred yards. The bow of the steamer entered some six or seven feet into the hull of the schooner. The steamer at last backed off from the schooner. The steamer was under full steam when she struck the schooner. She was a propeller.

I am sure the steamer was coming right smart ahead when she ran into the schooner. I could not see her propeller, and cannot tell whether the propeller was being moved for the purpose of backing her or not. The red light was on the port side of the schooner. We had six men on the schooner all told. The captain, the man at the helm, and I myself, were on deck when I saw the steamer. The
19 schooner sunk in three or four minutes after the steamer backed from her. We climbed from the schooner on board the steamer.

(Signed) DERMA EARECKSON.

We hereby agree to waive any informality in the taking of the above deposition.

W'M SCHLEY,
Proctor for Libellants.
JNO. H. B. LATROBE,
For Respondents.

Deposition of John Larkin, witness on the part of the respondent, before the same commissioner, at the same place, on the 7th day of November, 1867.

My name is John Larkin. I am a mariner. I have followed the sea about thirty years. I have been sailing in the Falcon since Feb'y last. I am not very much acquainted with the bay. I follow the orders given to me. I am not a pilot. I recollect the collision that took place between the Falcon and the Mary H. Banks, on the 21st June last. I was

engaged as the man at the wheel at that time. It was a beautiful moonlight night. The first time I saw the schooner she was three miles off. I took no notice of her after that. I saw the green light when I first saw her down the bay. When the word was passed to port our helm, I saw the red light and lost the green light. I can't say how long it was from the time I lost the green light to the time of the collision, as I paid no attention, thinking the vessels would go clear. The steamer struck the schooner abaft the forerigging on the port side. Had the vessels
20 kept the course they were on before the schooner ported her helm they would have gone clear.

JOHN LARKIN.

Deposition of Edward C. Reed, a witness on the part of the respondent, before the same commissioner, at the same place, and on the said 7th November, 1867.

My name is Edward C. Reed, master of the steamship Falcon. I am a master mariner. I have been in command of vessels for eight years. I have commanded the Falcon for twelve months. I recollect about a collision that occurred on the 21st day of June, 1867. I was bound in the steamer Falcon, from Baltimore to Charleston, deeply loaded with a heavy cargo of grain, and with a complement of forty, crew, and passengers. I left the wharf at Baltimore four o'clock p. m., and proceeded down the bay. The weather was fine and pleasant, with a light breeze from east-southeast. From 8 p. m. to midnight, passed a large fleet of vessels bound up the bay, but the night being fine and pleasant, with a full moon, I experienced no difficulty in passing them. As near as I can recollect, about ¼ a. m., the lookout on the forecastle reported a sail ahead; the ship being in my charge and that of the second officer at the time, I immediately ascertained with the night-glasses which way the approaching vessel was standing, and made her out to be a large schooner, bound up the bay, steering a parallel course with my
21 own. I proceeded on my course, keeping the vessel on my starboard bow, estimating at that time to pass about two ship's length from each other. My lights were burning brightly, and, from her position, she could have seen my bright mast-head light and my starboard green light. I saw at the same time her green starboard light. Both ships were approaching each other without altering their courses, and a collision of the two ships was not even thought of by me. When the schooner was within two ship's length of the steamer, he suddenly shut his green light out, and, by so doing, showing me his red light, and making me aware of the fact that he had put his helm hard a-port. This action of those in command on board the schooner made a collision unavoidable. It was left for me to choose whether the schooner should strike the steamer, or the steamer strike the schooner. I, being heavily loaded, with a heavy cargo on board, and a number of passengers, concluded to have the collision take place where my ship was strongest, (my bow being oak and my sides pine.) I immediately slowed my engines, and put my helm hard a-port. A moment after the helm was ported the collision took place. By the crash of the collision, I knew that of both ships, the schooner at least would be seriously injured, and to prevent her from sinking before I had secured the crew belonging to her, I kept the steamer under half speed, by doing so, holding the schooner up until I got her crew on board. When that fact was accomplished, I backed out from the schooner, whereupon she immediately sank. I struck the schooner on her port fore-rigging. There was
22 no possibility of avoiding the collision after the schooner put her

helm hard a-port. I could have let the schooner run into me by starboarding my helm, but would not risk the loss of my ship, on account of her own value, the value of the cargo, and the passengers on board. Had the schooner struck me she would have sunk me, and the damage to the schooner would have been comparatively light. When I first saw the schooner she was three miles off, and was plainly visible. By shuting out the green light and showing the red, I mean that she altered her course from the one she had been steering, by porting her helm. (The witness here draws a diagram marked Exhibit No. 1.) There was nothing in the way of the schooner to keep the schooner from keeping her course, or, if afraid of a collision, of starboarding her helm. There were three miles clear sea-room on the port side of the schooner.

After ascertaining that the steamer did not leak, I proceeded down the bay, and looked after the comfort of the rescued crew. I saw the captain of the schooner, and, after ascertaining that he was the captain, I asked him the reason for acting in such a foolish manner, bringing on a collision quite unnecessary. The answer he made was that "he was taught, on approaching a vessel, never mind in what direction she was going, he must invariably port his helm." I found one of the men belonging to the schooner injured. He complained of having his leg broken. I removed him into the cabin, and then asked him how
23 he got his leg broken, as I had been told previously that he was the man at the wheel at the time of the accident to the schooner. He told me "that he was at the wheel previously to the collision; that, when the captain of the schooner gave the order to port the helm, which he did, he saw that a collision was unavoidable, and he left the wheel, trying to save himself, got as far forward as the fore-sheet traveller, (that is an iron-bar that crosses the deck upon which the fore-sheet travels,) fell over it, and broke his leg." In conversation with the captain, when I first asked him whether he was on deck, he said "yes," but, afterwards, when deploring the loss of some money he had in the cabin, and I asked him why he did not save it, as he had plenty of time to do so, he remarked that he had only barely time to slip on the first pair of pantaloons he got hold of, and run on deck.

Upon ascertaining at daylight that the steamer was injured more than was at first supposed, I shaped her course to Fortress Monroe, where I landed the captain of the schooner and the man that was injured by the accident, to have his leg attended to by the military doctor at the fort, and proceeded afterwards with the steamer to Norfolk to repair damages. The steamer's stern was badly bruised, and some of the planks in her starboard bow were broken, which made it necessary to discharge part of the cargo of the steamer at Norfolk, to put proper repairs on the steamer to make her seaworthy, involving a detention of three days at Norfolk.

24 Cross-examined:

At the moment that I discovered that the green light of the schooner had disappeared, the schooner was heading south by east quarter east by the steamer's compass, which would make a true course south by east half east, my compass having a quarter point local attraction. At that moment the schooner, to the best of my judgment, was distant about two hundred feet, a point and a half on my starboard bow (a point being eleven and a quarter degrees of the compass.) My steamer is about one hundred and sixty-five feet long, or thereabouts. I had about three miles navigable water on my starboard bow; on my larboard bow I had all of five or six miles navigable water. There was

no obstacle to the use of this sea-room except the schooner. If I had starboarded my helm after the schooner ported her helm she would have struck me abaft my fore-rigging on the starboard side. I could not stop, my steamer being a screw steamer, in a less distance than six hundred feet; this distance was required on account of my steamer being loaded, a light steamer being much easier stopped than a loaded one.

At the time I changed my helm, I was going at the rate of eight knots over the bottom. My speed was ten knots, but I had two knots current against me. The schooner was altering her course to the eastward when I ported my helm. I was aware of the fact that she was steering to the eastward at the time I ported my helm. I saw at the time I
25 ported my helm, the schooner's red light full. The schooner carried her lights according to regulation. My lookout was stationed on the forecastle, a place on the foreward part of the steamer. The forecastle is a place formed by a triangle, the two pointing lines to the bow being the size of the triangle, and a line drawn across the ship's deck forward of her foremast being the hypothenuse. There are no bulwarks on my ship. My lookout was distant eighteen feet from the stem of the bow. My lookout was standing on the highest deck the ship has got. I commanded six different steamers before I commanded the Falcon. Out of Baltimore I commanded the Star of the South, the John Gibson, and the Cumberland, all running to Charleston, South Carolina. I have been running on this route constantly for two years. When I ported my helm there was a chance of my clearing the schooner entirely, or only slightly damaging her on the stern if the schooner kept her headway on, but the man at the wheel on the schooner having run away, the schooner shot in the wind and became stationary, the wind being east-southeast. I had a hope to clear her at the stern.

Question. If, instead of porting your helm in the expectation of clearing the schooner at her stern, you had slowed the vessel by the use of your engine to the extent of its power, and had starboarded your helm, would not the chance of clearing the schooner at her stern have been greater than the chance of clearing her by porting your helm?

26 Answer. It would not. If I had slowed my engine, which I did do, and starboarded my helm, the schooner would have run into me between my main and mizzen rigging, have broken into my cabin, and killed some of my passengers.

Question. In what direction did you strike the schooner, at what precise point, and by what part of the steamer?

Answer. I struck the schooner at an angle of thirty-five degrees, with both keels pointing forward, between her fore and main rigging, with the port part of my stem.

Question. What length of time elapsed from the time you ported your helm to the time of the collision?

Answer. To the best of my judgment about one minute and thirty seconds, including the time that I shifted my helm.

Question. Had you slowed your vessel before altering your helm, or not?

Answer. I slowed my vessel at the same time that I altered my helm; the reason why I did not stop the steamer entirely was, on account of the steamer always answering her helm much quicker while she has got headway on, as there was a chance of clearing the schooner if the steamer turned round very quickly.

Question. If you had made the effort, could you, from the moment you began to slow the steamer up to the time of the collision, have lessened her speed and momentum materially?

Answer. I could not. I could not have reversed my engines
27 from going full speed ahead to full speed astern in the time that elapsed between the schooner's altering her course and the collision.

Question. The last question is repeated with this explanation: That the question does not relate to the movement astern of the steamer, but to the lessening materially of the forward movement of the steamer.

Answer. I lessened her speed as much as it was in my power before the collision took place.

Question. Does the Falcon carry sails?

Answer. She did not carry sails that night.

Redirect:

Question. Reversing your engines when at full speed, ladened as you were, how long is it before you can produce stern-way in your vessel?

Answer. It would take a minute to slow, stop, and reverse the engine, and it would take four minutes before the steamer would make any stern-way.

Question. What was the speed of the schooner?

Answer. The schooner was going at the rate of eight miles over the ground, six miles propelled by her sails, and two miles by the current, which was in her favor.

Recross:

Question. When you arrived at Norfolk did you then make a protest, giving an account of the disaster?

Answer. I made a protest before a notary public; held a sur-
28 vey on the injuries sustained by the steamer by the port wardens at that place; made all the repairs recommended by them, and, after they were finished, held another survey, and got a certificate from them that the steamer was staunch and seaworthy.

Question. Look at the paper shown you, marked Exhibit No. 2, and say whether that is a copy of the protest so made.

Answer. That is the original protest.

Question. Are the statements therein true, to the best of your knowledge and belief?

Answer. They are, but not quite so extended as my evidence here.

Redirect:

Look at the paper marked Exhibit 3, and say whether it is the certificate referred to in the answer to the last interrogatory but one.

Answer. It is.

E. C. READ.

Papers referred to in deposition of E. C. Read.

EXHIBIT No. 1.

(Not copied into transcript sent to printer.)

29

30 EXHIBIT No. 2.

CITY AND COUNTY OF NORFOLK,
State of Virginia, ss:

Before me, D. C. Crowell, a public notary, duly commissioned and sworn, dwelling in the city of Norfolk, personally came E. C. Reed,

master of the steamship called the "Falcon," of Baltimore, of the burthen of 672 tons, or thereabouts, laden with an assorted cargo, and saith that he sailed from Baltimore on the 20th day of June last, and on the 21st, while off Point Lookout, collided with sch'r Mary H. Banks, and arrived at this port of Norfolk this 21st day of June, 1867, but fearing damage, enters this protest in due form of law, reserving to himself the right of extending the same at time and place convenient.

D. C. CROWELL,
Notary Public.

[U. S. 25 cts. int.-rev. stamp.]

STATE OF VIRGINIA,
City and County of Norfolk, ss:

I, D. C. Crowell, notary public in and for said county, duly commissioned and sworn, dwelling in the city of Norfolk, do hereby certify the foregoing as a true and correct copy of the original protest of E. C. Reed, master of the steamship "Falcon," record' in my office.

Witness my hand and seal this 22d day of June, in the year of our Lord one thousand eight hundred & sixty-seven.

[SEAL.] D. C. CROWELL,
Notary Public.

[U. S. 5 cent int.-rev. stamp.]

31 UNITED STATES OF AMERICA,
Commonwealth of Virginia, City of Norfolk, ss:

By this public instrument of protest, be it known and made manifest to all to whom it doth or may concern, that on this twenty-second day of June, in the year of our Lord one thousand eight hundred and sixty-seven, before me, D. C. Crowell, a notary public, duly commissioned and sworn, and dwelling in Norfolk, personally came and appeared E. C. Reed, master of the steamship Falcon, belonging to the port of Baltimore, of the burthen of 672 tons or thereabouts, and with him also came Robert Reed, second mate, Charles Teare and John Larkin, seamen of and belonging to the said steamship Falcon, who, being severally sworn, did declare and depose that the said steamship Falcon, being laden with a cargo of assorted merchandise, they, the said appearers, made sail and departed in and with the said steamship Falcon from the port of Baltimore, bound to Charleston, S. C., on the twentieth day of June, in the year one thousand eight hundred and sixty-seven.

That in the prosecution of said voyage nothing material occurred until the 21st day of June, at 50 minutes a. m., the ship being then under full speed, with Point Lookout bearing west about 3 miles distant, and heading S. by E. ¼ E., a moderate wind from E. S. E. blowing, the sky being clear, and a bright moonlight night. That they saw a vessel
a point on their starboard bow, showing at first both lights (green
32 and red) heading an opposite course to the steamer. That upon approaching nearer the red light was shut out and the green one only seen.

That they kept the steamer on her course, intending to pass about a ship's length to the starboard of the vessel. That at 1.10 a. m. they made her out as a large schooner steering up the bay, and did not anticipate any collision, the steamer being under the command of the captain and second officer, both of whom where in the wheel-house, together with the man at the wheel, and a man was on the lookout walking the forecastle deck. That when within easy hailing distance the schooner

put her helm hand a-port, altering her course from N. by W. ½ W. to about N. E., shutting out her green and showing her red light, and thus throwing herself broadside under the steamer's bow. That they, seeing a collision unavoidable, put the steamer's helm immediately hard a-port, and kept the ship agoing, to clear the schooner's stern, if possible. That they did not succeed in doing so, but struck the schooner amidships, cutting her half through. That after ascertaining the injury of the schooner they kept their engine going at half speed to keep her up until the crew were rescued; when this was done they backed clear, and the schooner immediately sunk.

That the man at the wheel on board of the schooner after, putting her helm hard a-port, ran away from it, and when forward fell over the jib-sheet traveller and broke his leg. That the schooner's name was the Mary H. Banks, in ballast from Boston.

33 That they kept the steamer on her course after getting clear of the wreck, and at daylight they found the injuries they had sustained were so serious as to make it prudent to repair it before making the voyage, and therefore bore up for Hampton Roads and Norfolk. That at 10 a. m. they anchored in Hampton Roads with 45 fathoms chain on port anchor. That they sent their boat on shore with crew of the schooner and the sick man for the purpose of getting his leg set. That at noon, their boat having returned, they hove up anchor and proceeded to Norfolk, where they arrived at 2 p. m.

That on the 21st day of June, the first-named deponent having arrived at Norfolk, did, within twenty-four hours thereafter, note for protest before me, the D. C. Crowell, to be extended if occasion should require.

And the said appearers did further severally declare that the said steamship Falcon, at the time of her departure from Baltimore as aforesaid, was tight, staunch, and strong; had her hatches well and sufficiently caulked and covered; was well and sufficiently manned, provided, and furnished with all things needful and necessary for said voyage; and that during the said voyage the said appearers and the residue of the crew used their utmost endeavors to preserve the said , and her cargo from damage.

And therefore the said E. C. Reed did declare to protest, and by these presents he doth solemnly protest, against all and every person

34 or persons whomsoever it doth or may concern, and doth declare that all damages, losses, and detriments that hath happened to the said steamship Falcon, and her cargo, are, and of right ought to be, borne by the merchants and freighters interested, or their respective underwriters, or whomsoever else it doth or may concern, by way of average or otherwise, the same having occurred as before set forth, and not by or through the insufficiency of the vessel, the neglect of him the said appearer, or either of the mariners belonging to said vessel.

In witness whereof the said appearers have hereunto subscribed their names in presence of me the said notary.

E. C. REID, *Captain.*
ROBERT REID, *Second Mate.*
CHARLES TEARE, *Seaman.*
JOHN LARKINS, *Seaman.*

All which matters and things were declared, alleged, and affirmed before me the said notary. In testimony whereof I hereunto set my hand.

[SEAL.] D. C. CROWELL,
Notary Public.

25 U. S. stamp.]

We, the undersigned, at the request of Capt. Edward C. Reed, repaired on board of the steamer Falcon, of and from Baltimore, himself master, she being laden with an assorted cargo of merchandise, and bound to Charleston, South Carolina, to examine said vessel.

It appears by the statement of the captain, when about ten
35 miles to the northward of Point Lookout, and prosecuting her voyage down the Chesapeake Bay, said steamer came in contact with the schooner Mary H. Banks, of Philadelphia, whereby she suffered considerable damage and was compelled to bear away for this port in distress.

On examination we found about ten feet of her stem badly bruised and mashed from the head to the scarf, which is about eighteen inches below the water's edge, and through the concussion several of the treena'ls on her starboard bow started, together with the pitch on her seams.

Taking into consideration the distressed condition of the said vessel and the necessity of restoring her to a good and seaworthy condition, so as to enable her to prosecute her intended voyage, we do hereby recommend a sufficient portion of her cargo forward (it consisting of corn) to be unladened, so as to enable the carpenters to do their work.

A new piece of stem, and it to be well fastened, and, where the treenails are started, either to bore them out and renew them, or drive them up and wedge them, thinking either way sufficiently secure.

Hood-ends recaulked and both tar'ed and caulked where necessary, and sufficient paint and oils to be furnished for said work. After the above is completed, for the said steamer to reladen with the cargo that was unladened, and proceed as soon as practicable to her port of destination, viz, Charleston, S. C.

JAMES L. HIPKINS, *P. W.*

[25-cent U. S. stamp.]

36 E. CHAMBERLIN, *P. W.*
N. NASH.

STATE OF VIRGINIA,
City of Norfolk, ss:

I, D. C. Crowell, a public notary in and for the said city and State, duly *constituted* and sworn, dwelling in the said city, do certify that before me personally appeared James L. Hipkins, E. Chamberlin, and N. Nash, who, being respectively sworn, did say the survey set forth in the foregoing return was made according to the best of deponents' skill and judgment, and that the facts therein stated are just and true.

In testimony whereof I have hereunto set my hand and affixed my official seal the 22d day of June, 1867.

[SEAL.] D. C. CROWELL, *Notary Public.*

[Three U. S. two-cent stamps.]

Agreement.

It is agreed that the several claims of N. W. Haley, captain of the schooner Mary H. Banks, against the steamer Falcon, and the several claims of Major D. Henderson, Shephard Haley, Denny Eareckson, John Hawkins, and Thomas Mister, against said steamer, growing out of or resulting from the collision between the said steamer and said schooner Mary H. Banks, which occurred in the Chesapeake Bay, on the 21st June, 1867, shall be consolidated with the case of the owners of said schooner against the said steamer, and be disposed of on the same

37 evidence and by the same decree which may be passed in the case of the owners of said schooner against the said steamer, with the privilege to all of said claimants to appeal from any decree which may be passed in said last-mentioned case, and with like privilege to the owners of the said steamer.

Sept. 15th, 1869.

WM SCHLEY,
Proctor for the Libellants in the principal case.
& Proctor for the several Claimants above mentioned.
JNO. H. B. LATROBE,
For Claimants.

Decree.

In the district court of the United States in & for the district of Maryland. September term, 1869.

WILLIAM H. BODINE & OTHERS
vs.
THE STEAMER FALCON.

The above cause being ready for hearing, and being submitted, and the several claims of Major D. Henderson, Shephard Haley, Denny Eareckson, John Hawkins, Thomas Mister, and N. W. Haley against the said steamer, having, by agreement of the proctors for the said parties, been consolidated with the case above-entitled, and being also submitted, the cases were heard and considered.

It is thereupon, this 15th day of September, 1869, by the district court of the United States in and for the district of Maryland, adjudged, ordered, and decreed that the stipulators in the principal case, Garrett
38 namely, John W. *Randolph* and J. Randolph Mordecai, shall, within twenty days from the date of this decree, pay to the libellants in the principal case, owners of the schooner Mary H. Banks, the sum of nine thousand dollars, with interest thereon from the date of this decree until paid, together with their costs, to be taxed by the clerk of this court.

It is further ordered, adjudged, and decreed that the claimants of said steamer, namely, the Baltimore and Ohio Railroad Company, the South Carolina Railroad Company, , the firm of Courtney & Trenholm, N. P. Dutton, E. C. Read, and the firm of Mordecai & Company shall pay to the following-named persons, respectively, the several and respective sums hereinafter specified, with interest thereon from the date of this decree until paid, namely: to N. W. Haley the sum of five hundred dollars; to John Hawkins the sum of six hundred dollars; to Denny Eareckson the sum of sixty dollars; to Shephard Haley the sum of fifty dollars; to Thomas Mister the sum of fifty dollars; and to Major D. Henderson the sum of fifty dollars.

WILLIAM F. GILES.

From which said decree, so as aforesaid passed, the said owners and claimants of the steamer Falcon, by their proctor aforesaid, in open court here, have prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held in the city of Baltimore on the first Monday in November next, and to them it is granted.

39 Thereupon it is ordered by the court here, that the record and

proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same is transmitted accordingly.

Appeal bond.—Filed Sept. 24, 1869.

Know all men by these presents that we, D. Mordecai and R. G. Reiman, are held and firmly bound unto William H. Bodine, N. Bright, George S. Marts, William Wallon, Ludlam Mathews, George Sheppard, William Bumm, Alexander McConnell, John E. Reinhardt, George W. Middleton, and N. W. Haley, in the full and just sum of twenty thousand dollars, lawful money of the United States, to be paid to the said obligees, their heirs, executors, administrators, or assigns, to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas heretofore, to wit, on the 15th day of September, in the year of our Lord 1869, the said obligees filed a libel in the district court of the United States in and for Maryland district, against the steamship Falcon, her engines, boilers, machinery, tackel, apparel, and other furniture, to recover damages consequent upon a collision between the said steamer and the schooner Mary H. Banks; and whereas,
40 at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore on the first Tuesday in September, in the year of our Lord one thousand eight hundred and sixty-nine, to wit, the 15th day of September, A. D. 1869, by the same court there was adjudged to be paid to the said William H. Bodine, George S. Marts, William Wallon, Ludlam Mathews, George Shephard, William Bumm, Alexander McConnell, John E. Reinhart, George W. Middleton, and N. W. Haley, ; from which said decree so as aforesaid passed the stipulators, John W. Garrett and J. Randolph Mordecai, hath prayed an appeal to the circuit court of the United States to be held at the city of Baltimore on the first Monday of November, 1869:

Now, the condition of this obligation is such that if the said stipulators shall well and truly prosecute, with effect, their said appeal, and pay to the said William H. Bodine, N. Bright, George S. Marts, William *Maelon*, Ludlam Mathews, George Shephard, William Bumm, Alexander McConnell, John E. Reinhart, George W. Middleton, and N. W. Haley, their costs and charges decreed unto them by the said district court, and also all such damages, costs, and charges as may be awarded unto them by the said circuit court, in case the said appellants shall fail to make good their said appeal, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

Signed, sealed, & delivered—

D. MORDECAI. [SEAL.]

41 R. G. RIEMAN. [SEAL.]

In the presence of—
R. STEWART LATROBE.

(Endorsed:) Bond approved 24 Sept., 1869.
WILLIAM F. GILES.

In testimony that the aforegoing is truly taken and made from the record and proceedings of the district court aforesaid, I have hereunto subscribed my name and affixed the seal of the said district court this 26th day of October, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL'S PLACE.] JAMES W. CHEW,
Clerk District Court.

Afterwards, to wit, on the day of , in the year of our Lord 1870, the appellants, by their proctor aforesaid, filed in the circuit court here the following depositions, to wit:

Depositions taken before Isaac Brooks, jr., commissioner for the Maryland district, on the 13th day of April, 1870.

ROBERT REID, being by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and, being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

42 I was second mate of the Falcon when the st'r collided with the schooner Mary H. Banks on the night of the 21st of June, 1867. It was a bright moonlight and starlight night. The steamer was bound down the bay. I was in the pilot-house at the time of the collision. We had a look-out stationed right forward on the bow, on the forecastle head. I could see him from the pilot-house. I saw him there before the collision. I saw the schooner about twenty minutes before the collision. I guess she was then five or six miles off. She had lights. I saw the green light—the starboard light. We had lights on the steamer—green and red, and a white mast-head light. We were going down with a head wind, and the schooner was coming up with a fair wind. The sch'r and steamer were sailing on parallel lines in opposite directions. Had they continued on their respective courses, they would have passed about four hundred feet apart. The cause of the collision was, they put the schooner's helm a-port and crossed our bow. We immediately ported our helm and slowed the steamer down, but could not clear him. I don't think the schooner was more than from one to two hundred feet from us when she ported her helm. There was nothing to prevent the schooner from starboarding her helm, when she would have gone off from the steamer. If, instead of porting the helm on board the steamer, it had been starboared, the schooner would have run into us.

43 At the speed at which the two vessels were going, had the steamer starboarded her helm, the schooner would have run into the steamer on the starboard side, somewhere about the main rigging. That would very likely have sunk us. The lookout was a good man on board the steamer. He was a stranger. He proved a very good man on the voyage, and was on two or three voyages afterwards. I overheard a conversation between the captains of the steamer and schooner. Capt. Reed asked the captain of the schooner what he ported his helm for. He said he thought it was the law. That was all I heard. I have sailed in steamers up and down the bay four or five years. When steamers and schooners pass each other, and each seeing the other, it is considered safe to pass between one and two hundred feet of each other.

Cross-examined:

I was second officer in the pilot-house. I was looking out at the man

who was steering, to see that he kept his course. My duty was also to look out for vessels, and to look out for the safety of the ship generally. I can't say how the wind was, but it was from the southward. At the time we first saw the schooner, I think, but am not quite sure, that the steamer was steering south by east half east. We did not change the course of the steamer from the time we first saw the schooner until she ported her helm. The Falcon was going about nine knots, more or less. I don't recollect the tonnage of the Falcon, either registered or actual.

44 When I first saw the schooner I suppose she was going north by west half west. She did not change her course, that I saw, from the time I first saw her, until she ported her helm at the time I have mentioned, when she was from one to two hundred yards from us. The speed of the steamer depends upon the steam she carries, and is ordinarily from nine to ten knots an hour. At the time of the collision the steamer was going ahead slow. I can't say where the steamer struck the schooner; it was on the port side, and, I think, it was in the fore part of the main rigging. I can't say how far the steamer penetrated into the body of the schooner. I can't say at what angle the steamer struck the schooner. The schooner sunk immediately upon being freed from the steamer.

Redirect:

I never saw the red light of the schooner until she ported her helm. The distance from the bow of the steamer to the bow of the schooner, when the schooner's direction was changed by the porting of her helm, was, I suppose, four hundred feet or thereabouts.

(Signed) ROBERT REID.

DAVID MORDECAI, being by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and, being examined on behalf of the appellants, deposeth and saith as follows, to wit:

45 I was on board of the steamer Falcon at the time of the collision with the schooner Mary H. Banks. When the collision took place I was lying in my berth in the cabin. The first information I had of it was hearing the gong strike for the engineer to slow-down the ship, and in a minute or two I heard the ship strike. I immediately ran out on deck and saw that we had run into a schooner about amidships. There was no excitement or alarm on the part of any one on board the steamer. Capt. Reed was in command, and at the wheel, and was giving his orders in regard to saving the crew of the schooner, and which *was* being promply attended to. Whilst this was going on, he kept the ship going ahead under one bell, and immediately upon learning that all the crew of the schooner were on board the steamer, safe, he backed his ship from her, and in a few minutes the schooner filled with water and sunk. I went into the pilot-house where the captain of the steamer was, and invited the captain of the schooner also to go in with me. Upon the captain of the schooner entering the pilot-house, Captain Reid, of the steamer, accosted him, as nearly as I can recollect, in the following language. "For God's sake, captain, what did you mean by porting your helm, crossing my bow, and making a collision with me inevitable?" The captain of the schooner replied, "that he ported his helm because he thought that the law required him to port his helm." Captain Reid then asked him "If he did not know that the law required a sailing vessel to keep on her course, and a steamer to get out of her way;" and, "if he sup-

46 posed that there was nobody on board the steamer, and she was sailing herself." The captain appeared to be conscious of having committed an error at the time, and refrained from saying anything further on the subject. I then went out of the pilot-house to see if I could be of any assistance to one of the crew who had broken his leg by the collision. After getting him some brandy, and rendering him all the assistance I could to render him comfortable, I inquired of him how he came to break his leg. He informed me that his captain gave him orders to port his helm; that he was certain, when he ported, that the steamer would run into him, and that he immediately left the helm and ran forward, fearing that he would get killed in the stern. In running forward he tripped over the iron traveller and broke his leg.

We concluded, after the collision, to go to Fortress Monroe, which was the nearest port, in order to get assistance for the crippled man. We arrived there on the morning of the 21st, and sent him ashore at Fortress Monroe, where he had his leg set. We then proceeded to Norfolk to repair our damage, at which place we were detained some two or three days doing so. Then the st'r proceeded on her voyage to Charleston, where she was bound.

The night of the collision was a beautiful moonlight night. It was as light as day, and you could see three or four miles off. My house in Baltimore is agent of the line of steamers *of* which the Falcon belongs.

I was going, as a passenger, to Charleston.

47 Cross-examined:

(The counsel for the appellees excepts to so much, and all such part, of the foregoing deposition as professes to detail what was said by the captain of the schooner, and by the man with the broken leg, and without waiving such exceptions, cross-examines the witness, as as follows:)

I don't know the name of the captain of the schooner. I don't know the name of the man with the broken leg. I did not inquire the names of any of them. The schooner's name was the Mary H. Banks. Our steamer did not carry the man with the broken leg into Fortress Monroe, but anchored off, and sent him there in a boat. We had no surgeon or physician on board the steamer. No coastwise steamers carry surgeons. I cannot say what the distance was from the place of collision to Fortress Monroe. It was five or six hours' run for the steamer. Nothing was done to the broken leg; there was no one on board capable of setting it. We made him as comfortable as we could, and gave him stimulants. He did not seem to be suffering. I do not know who paid the expenses, at Fortress Monroe, of the man with the broken leg, for attendance or board. Our company paid nothing. When a ship is under one bell she is going at slow speed. The object was to keep up the schooner from sinking that the crew might be saved.

(Signed) DAVID MORDECAI.

48 Depositions of witnesses, on the part of appellants, taken before the same commissioners, at the same place, on the 30th day of November, 1870.

JOHN L. SANFORD, being by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

My name is John L. Sanford. I am 60 years of age. I am a marine surveyor, an occupation that leads me to go round among vessels, and see

their condition and report the same to the underwriters; also very frequently to examine vessels for appraisement. I am acquainted with the sch'r Mary H. Banks. I first saw this vessel in 1867. I can't say whether it was before or after the accident. I know I reported her in 1867. On reflection I am sure it was before the accident. I know I reported her as a 2¼ vessel; that signifies that she was not a very good vessel. I think it may be that I reported her as a 2¼ good vessel, but I will furnish the commissioner with a copy of my report, to be marked "J. L. S., No. 1."

Upon the second occasion of seeing the Mary H. Banks, it was in April, 1870, I think. I was informed, in Capt. Wilson's office, of which I am an officer, that Mr. Mordecai had been there, and desired
49 that I should make an inspection of the vessel. I went on board and examined her, on deck, below, rigging, and spars. I saw the repairs that had been made to the vessel. The repairs were on the port side. I should judge, from the repairs made, that she had been cut through, by a collision, through the water-way, the plank-shear, some deck and side-plank. Those repairs seemed to be made in a workmanlike manner. The condition of the vessel, in other respects, I did not consider good. I should value her at seventy-five hundred dollars. I would not have given that for her. She was fifteen years old, about. She was not copper-fastened that I could see. I generally look to see the condition of the fastening. She was reported always as an iron-fastened vessel in the Lloyd's Register. To my mind she was a decidedly better vessel after the repairs than before the accident. My reason for saying so is as follows: The other parts of the vessel were more or less decayed around the fastening, which, of course, weaken the vessel. To make these repairs, deck-planks and side-planks would have to be stripped off in long lengths; and if the timbers were decayed where the collision occurred, they should be taken out and sound timber inserted; then the putting on the plank the whole length would naturally make that side stronger, the timber being sound and the fastenings being new. She took grain in the voyage she made after I had examined her in April last.

Cross-examined:

50 I made no written report of my examination of the Mary H. Banks in April. There is nothing on the book to show her condition after the repairs. The old report remains unchanged.

Question. Do you mean to be understood to say that the timbers or planking of the sch'r Mary H. Banks, on her port side, were decayed at the time of the collision?

Answer. I cannot say.

Question. Would repairs on one side of a schooner strengthen the other side of the schooner, if the timbers and planks were decayed on that side?

Answer. No; but the vessel would be strengthened.

Question. What do you mean by that? Do you mean that the entire vessel would be strengthened, or that she would be strengthened in that part where the repairs had been made?

Answer. I mean the entire vessel.

Question. Be good enough to give some reasons for this.

Answer. The vessel being at sea, pitching or laboring, is assisted and held up by the new work placed on one side. The deck-planks put on were eight or ten streaks, in the present case. Again, lay that vessel on shore, on an uneven bottom of a river, let the tide leave her, or the

water leave her, the new work certainly will hold the vessel up longer than the old work with the wood decayed around the fastenings.

(Signed) J. L. SANFORD.

51 FRANCIS W. WILSON, being by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and being examined on behalf of the appellants, makes oath, deposeth, and saith as follows, to wit:

My name is Francis W. Wilson. I am sixty years of age and upwards. I am now an insurance broker in the city of Baltimore. I followed the sea some forty years. I was six years inspector for the Baltimore Marine Insurance Company, my duty being to examine vessels with regard to their sea-worthiness, and sometimes with regard to their value. I have seen the schooner Mary H. Banks from time to time. I went on board to examine her as to her condition, with a view to take an insurance-risk upon her for the United States Lloyds, of New York, and also, at the same time, at the instance of Mr. Mordecai, to make a judgment as regards her value. This was in April, 1870. It was after the collision with the steamer Falcon, and after she had been sunk and raised. I went through the vessel above and below, and I saw recent repairs, which I supposed had been put on after the collision. After I had looked the vessel through I thought seventy-five hundred dollars was her full value. When I saw her I thought she was worth quite as much as she was before the collision. I saw that the vessel had been run into, and her frame was exposed, and that the repairs had been properly made, and that I would have more confidence in her than I had before.

52 Cross-examined:

Capt. Sanford accompanied me and was with me in making this examination. Capt. Sanford had been requested by Mr. Mordecai, and it was partly at his instance and partly at Mr. Mordecai's, that I accompanied him to make the valuation. I don't think there is a great deal of difference as to the value of vessel property from June, 1867, to 1870. After the war there was a decline. I have never seen the registered tonnage of the Mary H. Banks, but I suppose, from reports that I have seen, that she is from 230 to 240 tons. I included the tackle, apparel, and furniture of the schooner in my valuation. I had never examined the schooner before this for the purpose of valuing her, but I had seen her. I cannot say what her capacity in barrels was.

Redirect:

I could not infer from the condition of the vessel that *other* than she had been used in the general freighting business.

(Signed) FRA'S W. WILLSON.

Deposition of witness taken before Charles P. Clarke, United States commissioner, in the city of Philadelphia, on the 24th day of December, 1870.

IN THE MATTER OF THE SCHOONER MARY H. BANKS
vs.
53 STEAMER "FALCON."

Deposition of the following witness on the part of libellant, produced, affirmed, and examined before me this 24th day of December, 1870, at my office, No. 424 Library street, in the city of Philadelphia, Pa., between the hours of 9 a. m. and 3 o'cl'k p. m., in the above-entitled cause.

JACOB BIRELY, of the city and county of Philadelphia, aged about forty-nine years or thereabouts, having been duly affirmed according to law, deposes and says:

I am a member of the firm of Bir*ley*, Hiltman, Streaker shipwrights and builders, corner of Beach & Warren sts., in the city of Philadelphia. I am familiar with the construction and build of vessels. My father and brother built the schooner "Mary H. Banks." The last time I saw the vessel was the early part of August, 1866, when she was repaired at our yard. She was on our marine railway, receiving repairs. I was on board of her all the time she was being repaired. The repairs we put upon her amounted to $487.00. When she left our yard she was tight, staunch, and strong, and otherwise in good condition. She was a schooner. She had one deck, two masts; about one hundred and seven feet in length, twenty-nine feet in breadth, and about nine feet in hold. She measured about two hundred and sixty tons. I consider myself a competent judge to place an estimate upon her valuation. I suppose, at the time of her loss, she was worth from ten thousand to eleven
54 thousand dollars, ($10,000 to $11,000,) and not less than that amount. I should not have hesitated giving that amount for the vessel at that time if I had been desirous of purchasing a vessel. I consider that a fair estimate of her value at the time I last saw her. I mean the "Mary H. Banks," schooner, of Philadelphia.

I have been in ship-building business for about thirty-three years, and during that time our firm has built between four hundred and fifty and five hundred vessels, and repaired, probably, one thousand vessels.

(Signed) JACOB BIRELY.

Affirmed and subscribed this 24th day of December, 1870.

[SEAL.] CHA'S P. CLARKE,
U. S. Comm'r.

I do hereby certify that the above-named Jacob Bir*ley* was duly qualified and examined at the time and place stated in the caption, and subscribed his name to this deposition in my presence.

Witness my hand and seal this 24th day of Dec., 1870, at the city of Philadelphia aforesaid.

CHA'S P. CLARKE, [SEAL.]
U. S. Comm'r.

It is agreed that any objection that could be made to the preceeding deposition on the ground of informality is waived. It is to be read as evidence, as if taken by consent.

55 JNO. H. B. LATROBE,
For Appellants.
W'M SCHLEY,
For Appellees.

And at the same time the appellees, by their proctor, filed in the circuit court here the following depositions, to wit:

Depositions taken before Isaac Brooks, j'r, commissioner for the Maryland district, on the 11th day of November, 1870.

N. W. HALEY, being by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being

examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

My name is N. W. Haley. I reside in Morristown, New Jersey. I know the schooner Mary H. Banks. In June, 1867, she belonged to William Bodine—I can't give his middle name—N. Bright, George S. Marts, Ludlam Matthews, George Shepperd, William Bumm, Alexander McConnell, John E. Rhinehart, George W. Middleton, and N. W. Haley, and William Walton. The schooner was registered in Philadelphia, but her register at that time was deposited in the Baltimore custom-house, and is still there. Her tonnage, new measurement, if I remember right, was 186 tuns. In June, 1867, she was employed in the coasting-trade. On the 21st of June, 1867, about half past one o'clock in the morning, she was employed on a voyage from Boston to Balti-
56 more, under ballast. In coming up the Chesapeake Bay, on the morning of the 21st, about five miles north of Point Lookout, we made a steamer's lights, distance about four miles. We were at that time steering north by west, which is the proper course up the bay. The wind was east-northeast—about a six-knot breeze. The steamer was going down the bay at a speed, apparently, of ten knots. The steamer was apparently coming in an opposite direction, head to head. We had a crew of six men. I was captain of the schooner. I was on deck, alongside the man at the wheel, when I first saw the steamer. I had a look-out on board the schooner, who first announced the steamer, and reported her to me. It was a clear, moonlight night. We had our lights—red and green—displayed in their proper places. After I saw the steamer we kept the schooner on her course. When within about a hundred yards of the steamer, she, the steamer, not having changed her course, and seeing that a collision was inevitable, the man left the wheel, in order to save himself. In about one second the schooner was struck by the steamer between the fore and main rigging, on the port side. The schooner was cut nearly in half. She sank in about four minutes. Where she sank the water was about five fathoms deep. The man at the wheel was injured. He had his leg broken. He was thrown down by the shock of the collision. His name was John Hawkins. In consequence of the injury Mr. Hawkins has lost about fourteen months. He was getting thirty dollars a month, and found.

57 The schooner Mary H. Banks was worth about twelve thousand dollars. She was totally lost to the owners. She was afterwards raised by Baker & Bro's, wreckers, at Norfolk. She was good, staunch, and strong when she started on her voyage, and was properly equipped. There was no cargo on board. Nothing was saved from the schooner. I had three hundred dollars on board, which was lost, with all my clothes, books, charts, quadrant, and other articles, including night-glasses, and a spy-glass. Including the three hundred dollars, I considered my individual loss at seven hundred dollars, over and above my interest in the vessel. The crew lost some money; one about ten dollars, and the other about five or six; and they all lost their clothes. The crew's names were M. D. Henderson, Shepperd Haley, John Hawkins, Denny Eareckson, Thomas Mister, and myself. I suppose the mate's clothes, Mr. Henderson', were worth one hundred dollars; and that the clothes of the men were worth about seventy-five dollars each.

I and the crew of the schooner got on board of the steamer, and were all landed at Fortress Monroe, but Eareckson, who was landed at Norfolk. I stayed by Hawkin'; took him on board a steamer, and brought him to Baltimore, and sent him to Philadelphia, in care of the mate and the rest of the crew.

Cross-examined:

The schooner was about twelve years old. She was built in Philadelphia, and was 186 tuns. Her capacity was three hundred and
58 forty tuns; would hold twenty-five hundred barrels. My money that I lost consisted of two one-hundred-dollar bills and two fifty-dollar bills. I kept them locked up in my chest. It was the proceeds of a cargo of coal landed near Boston, at Neponset. We had taken the coal from Baltimore. That was not the whole of the proceeds of the coal. The money belonged to me as part owner of the schooner, it being my portion of the freight for the coal. At the moment of the collision I was standing on the quarter. I was knocked down. I was not injured. The man at the wheel was knocked down by the shock of the collision, and got up with a broken leg. It was a bright night, and, as the steamer approached, I was looking at her. I am not able to swear that, at the time of the collision, the man at the helm did not run forward and run over the traveller. I only know that he fell somewhere on the deck, and his leg was broken. I and Mr. Eareckson picked him up about amidships. I don't know the value of the mate's clothes; I only suppose they were worth about one hundred dollars.

(Signed) CAPT. N. W. HALEY.

HALEY. Redirect:

Question. Have you any recollection of having a conversation with capt. of the steamer, touching the loss of your money, in which he asked you why you did not save it; that you had plenty of time to do so; to which you replied that you had barely time to slip on the first pair of pantaloons, and run on deck?

59 Answer. No, sir.

Question. Were you, in fact, on deck at the time the collision occurred; how long had you been there?

(Objected to as leading.)

Answer. I was there, and had been there for an hour and a half.

Question. Have you any recollection of having stated to the captain of the steamer that you "were taught, on approaching a vessel, never to mind what direction she was going, but invariably to port your helm," or any statement to that effect?

Answer. No, sir.

Recross, without prejudice to the right of objecting to the redirect, as not being called for by anything occurring in the cross-examination:

Question. What clothes had you on when you *when you* went on board the steamer?

Answer. I had on an old pair of pants and a checked shirt, an old pair of cloth-gaiters, and a hat.

Question. Do you know it to be a rule of the sea, when vessels meet, going in opposite directions, they shall port their helms respectively?

Answer. It is.

(Signed) CAPT. N. W. HALEY.

JOHN HANKINS, being by me first carefully examined and cau-
60 tioned, and duly sworn, according to law, to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

My name is John Hankins. I have known the schooner Mary H. Ba. ks for five years. I had been on her for three years before she was lost. She was in what I call a good condition. I am not a judge of the

value of vessel-property, and, therefore, cannot tell what she was worth. I was on board the schooner as seaman on the night of the 21st of June, the time of the collision. I was at the wheel. The captain was standing to the leeward of me, about three feet from me, on the port quarter. The man on the look-out reported a light ahead. The captain asked him if our lights were burning forward; he said they were. Our schooner was heading north by west, with the wind east-northeast; there was a six-knot breeze. The night was clear. I kept my course steadily north by west. I saw the steamer's port-light from where I stood. The steamer was heading apparently an opposite course from us. Capt. Haley remarked, when she got very near to us, "She is going to run into us." I looked under the main boom so that I could see her better, and I saw that she was coming into us. I let go the wheel, and tried to save myself, but before I could get anywhere to hold on to she ran into us, and the shock threw me down and broke my leg. I can't tell where I got to when my leg was broken, but I think it was
61 forward of the cabin. Earickson came and helped me up, and Captain Haley got me on board the steamboat. It was fourteen months before I was able to do any work. I lost my time, and part of the time I paid my board, five dollars a week, for seven months of the time. I lost between six and seven dollars, and all my clothes, which I could not have bought for a hundred dollars. I was landed at Fortress Monroe, and from there was brought to Baltimore, and was then taken to Philadelphia.

Cross-examination waived:

(Signed) JOHN HANKINS.

JOHN R. RHOADS, being by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and being examined on behalf of the appellees, makes oath, deposeth, and saith as follows, to wit:

My name is John R. Rhoads. I am a commission-merchant. My place of business is corner of Smith's wharf & Pratt st. I have been engaged in the shipping business about twenty-five years. I consider myself a competent judge of the value of vessel-property. I knew the schooner Mary H. Banks four years. At one time I made an examination of her; about a year before her loss. The cause of it was, the inspector of vessels was looking at her at the same time. I heard the inspector say that she wanted a little caulking and she would then be all right. (The inspector's statements objected to.) Had I wanted to buy a
62 schooner I should not have hesitated buying her for twelve thousand dollars. I had vessel-property at that time, not as good as the Mary H. Banks, which I valued in that proportion. I think I have known Capt. Haley for about seven years. I have never heard anything against him so far as seamanship is concerned. I consider him a good coaster. I have never heard anything against his character in any way.

Cross-examined:

At the time of her accident I was broker in charge of her business, and when she was in port I was the ship's husband. I am not able to say what is the annual deterioration of a vessel. I never made that calculation. I can't say in what proportion vessels deteriorate. Some vessels deteriorate more than others; it depends upon where the vessel is built, and of what material, and circumstances. I only examined the Mary H. Banks from the outside, and from what the inspector said I formed my conclusion. I never made a voyage with Capt. Haley; my

acquaintance is limited to what I have seen of him in port and from (what I heard of him from others.)

(So much of the answer as is derived from others is objected to as not in answer to the question.)

(Signed) JOHN R. RHOADS.

And afterwards, to wit, on the day of , in the year 1871, the appellees, by their proctor, filed in the circuit court here the following exceptions to testimony, to wit:

63 In the circuit court of the United States for Maryland.

THE STEAMER FALCON, APPELLANT, *vs.* W'M H. BODINE & OTHERS. } Appeal from district court.

Exceptions taken by the appellees to the following testimony, taken in this case on the part of the appellant.

1. To so much of the deposition of Edward C. Reid as is hereinafter designated:

(1.) To much of said deposition as professes to detail alleged circumstances between him and the captain of the schooner.

(2.) To such of said deposition as professes to state a conversation between him and the man at the wheel, (the man who had been injured.)

2. To so much of the deposition of David Mordecai as is hereinafter designated:

(1.) To so much of said deposition as professes to state an alleged conversation between him and *and* the captain of the schooner.

(2.) To so much of said deposition as expresses the opinion of witness that the said captain appeared to be conscious of having committed an error.

64 (3.) To so much of said deposition as purports to state a conversation between him and the man who had broken his leg.

3. To so much of the deposition of Robert Reid as is hereinafter designated:

(1.) To so much of said deposition as professes to detail an alleged conversation between the captains of the steamer & of the schooner.

W'M SCHLEY, *for Appellee.*

And afterwards, to wit, on the 6th day of January, in the year of our Lord 1871, the said appellants, by their proctor, filed in the circuit court here the following exceptions, to wit:

Circ't c't U. S., M'd district.

THE STEAMER FALCON & CLAIMANTS, APPELLANTS, *vs.* BODINE & OTHERS. } Appeal in admiralty.

Exception & suggestion of appellants.

The appellants, by way of suggestion & exception, respectfully submit to the court:

That there is no allegation or proof, in the cause, of a total loss
65 of the schooner Mary H. Banks, as for which the hon'ble the district court has decreed.

On the contrary, it appears affirmatively by the evidence that there was no total loss of said schooner, but that said schooner was raised and repaired, & there is no proof of expense incurred in raising or repairing her, or any other proof of damage, such as is required by the rules of admiralty as foundation for a decree for damages in collision.

The appellants submit therefore that said decree, so far as the owners of the schooner are concerned, must be reversed & the libel dismissed.

And the appellants further except & submit that there is no allegation or proof in the cause, that the course of the schooner was changed or her helm abandoned, about or before the moment *the moment* of collision, by reason of any danger or apprehended danger of collision, which induced those on board the schooner, from fear or excitement, to alter the course or desert the helm of said schooner, or by reason that the steamer approached so near to the schooner as to violate the duty, in that regard, of those on board said steamer, under the rules of navigation, & produce natural apprehension of danger in those on board said schooner, by reason whereof they altered her course or abandoned their helm.

On the contrary, the case made by the libel expressly is, that the schooner did not alter, but steadily held, her course, and that the same was not in any way changed, but continued unaltered down
66 to the moment of collision, and the proof & contention of the libellants are to the same effect.

Jan'y 6th, 1870.

JNO. H. B. LATROBE,
WALLIS & THOMAS,
For Appellants.

And afterwards, to wit, on the 13th day of January, in the year of our Lord 1872, the circuit court here made and passed the following decree, to wit:

Decree.

Circuit court, 4th circuit, Maryland district.

THE STEAMER FALCON
vs.
WILLIAM H. BODINE AND OTHERS. } Appeal from district court.

This cause having heard, and the proceedings, evidence, and arguments of counsel having been read, heard, and considered:

It is, this thirteenth day of January, 1872, by the circuit court adjudged, ordered, and decreed, that the decree of the district court be, and the same is hereby, reversed, and that the libel in this case be dismissed with costs.

HUGH L. BOND, *Judge &c.*

67 From which said decree so as aforesaid passed, the appellees, by their proctor aforesaid, in open court here prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, and to them it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating thereto, be transmitted to the said Supreme Court, and the same are transmitted accordingly.

Bond.

Know all men by these presents that we, Ludlam Matthews, of the city of Philadelphia, George Shepherd, of said city and State, and John R. Rhodes, of the city of Baltimore, State of Maryland, are held and firmly bound unto the Baltimore and Ohio Railroad Company, the South Carolina Railroad Company, the Georgia Railroad Company, Courtney & Trenholm, N. P. Dutton, E. C. Read, and Mordecai and Company, owners and claimants of the steamer Falcon, in the full and just sum of three hundred dollars, to be paid to the said the Baltimore and Ohio Railroad Company, the South Carolina Railroad Company, the Georgia Railroad Company, Courtney & Trenholm, N. P. Dutton, E. C. Read, and Mordecai & Company, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly
68 and severally, firmly by these presents, sealed with our seals, and dated this seventh day of February, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas, lately at a circuit court of the United States for the fourth circuit and district of Maryland, begun and held in the city of Baltimore on the first Monday in April, in the year of our Lord eighteen hundred and seventy-one, in a certain appeal depending in said court between the said owners and claimants of the steamer Falcon, appellants, and William H. Bodine, N. Bright, George S. Marts, William Wallon, Ludlam Matthews, George Sheppard, William Bumm, Alexander McConnell, John E. Reinhart, George W. Middleton, and N. W. Haley, appellees, a decree *decree* was passed by said circuit court, reversing the decree of the district court for the Maryland district, and dismissing the libel in this case; and the said William H. Bodine, N. Bright, George S. Marts, William Wallon, Ludlam Matthews, George Sheppard, William Bumm, Alexander McConnell, John E. Reinhart, George W. Middleton, and N. W. Haley having obtained an appeal from the said decree of the said circuit court to the Supreme Court of the United States, to be held at Washington on the first Monday in December next:

Now the condition of the above obligation is such that if the said William H. Bodine, N. Bright, George S. Marts, William Wallon, Ludlam Matthews, George Sheppard, William Bumm, Alexander
69 McConnell, John E. Reinhart, George W. Middleton, and N. W. Haley shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

LUDLAM MATTHEWS. [SEAL.]
GEORGE SHEPHERD. [SEAL.]
JOHN R. RHOADS. [SEAL.]

Sealed and delivered in presence of—
SAMUEL B. GODFREY.
HENRY MATTHEWS.
Witness:
D. C. SMULL.

Which bond is thus endorsed, to wit:
"Bond approved 7 February, 1872.

"WILLIAM F. GILES."

In testimony that the aforegoing is a true copy, taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name and affix the seal of the said circuit court this twentieth day of September, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.]

JA'S W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 426. The schooner "Mary H. Banks," W'm H. Bodine et al., claimants, appellants, vs. The Steamer "Falcon," The Baltimore & Ohio Railroad Company et al., claimants. Maryland C. C. U. S. Filed 26th September, 1872.

Supreme Court of the United States.

THE SCHOONER MARY H. BANKS, WILLIAM H. BODINE, AND OTHERS,

vs.

THE STEAMER FALCON, THE BALTIMORE & OHIO R. R. CO., AND OTHERS.

Appeal from the Circuit Court of the United States for the District of Maryland.

APPELLANTS' BRIEF.

The appellants, owners of the schooner Mary H. Banks, filed a libel for collision against the steamer Falcon, on the 5th of July, 1867, and on the following day said steamer was released upon stipulation bond.—(Page 4 of record.)

The facts in the case, as set forth in the libel upon page 1 of record, are substantially as follows:

On the 21st of June, 1867, the schooner Mary H. Banks, of which the libellants were at the time owners, was in the prosecution of a voyage, in ballast, from the port of Boston to the port of Baltimore, and at about the hour of half-past one o'clock a. m. on said day, while proceeding up the Chesapeake Bay on a course north-by-west, which was her proper course, a gentle breeze blow-

ing from east-northeast, and the night clear and moonlight, the said schooner was run into, when about five or six miles above Point Lookout, by the said steamer Falcon, from the effects whereof the schooner sunk in about four minutes thereafter. The schooner had steadily held her course until the collision occurred through the carelessness or indifference of those having charge of the steamer.

It is in evidence that the schooner was staunch, thoroughly appareled, and fully manned, with her lights up, a vigilant lookout forward, an experienced helmsman, and her captain on deck.

The answer filed by the appellees admitted the collision; nor do they deny that the schooner was on her proper course; but they do deny that the schooner kept her proper course up to the moment of the collision. That the steamer kept her course, intending to pass about a ship's length to the starboard of the schooner, but that, when within easy hailing distance, the schooner put her helm hard a-port, altering her course from north-by-west-half-west to about northeast, thus throwing herself under the steamer's bow; and that the man at the schooner's wheel, after putting her helm a-port, ran forward, and, falling over the jib-sheet traveler, broke his leg.

The testimony of Derma Eareckson, a witness for the libellants, and who was the lookout upon the schooner, will be found upon pages 7 and 8 of record.

The respondents likewise took testimony, and the case was fully argued before the district court (Giles, J.), and a decree passed on the 15th of September, 1869, directing that the stipulators should pay to the owners of said

schooner the sum of nine thousand dollars, with interest and costs; and further directing that the claimants of said steamer should pay to the crew of said schooner certain sums of money, as will more fully appear by reference to said decree on page 16 of record. (An agreement between the proctors for the libellants and respondents, respectively, that the claims of the captain and crew should be consolidated with the case of the owners of said schooner against the steamer, and be disposed of in the same way, will be found on page 15 of record.)

The respondents took an appeal from this decree to the Circuit Court of the United States for the District of Maryland. Additional testimony was then taken, and the case argued before said court (Bond, J.); by which court the decree of the district court was reversed, and the libel dismissed, without any reason being assigned therefor.—(Page 28 of record.)

Thereupon this appeal was taken by the libellants.

On behalf of the appellants it will be respectfully insisted that the decree of the circuit court reversing the district court was erroneous, for the reason that there is nothing in the additional testimony justifying such reversal, and no reason whatever is assigned why the decree of the district court should be reversed. The testimony shows conclusively that the schooner was on her proper course, and was otherwise without fault, and, but for the culpable negligence of those on board the steamer, the collision would never have occurred. The testimony on the part of the appellees is, moreover, conflicting, and there is a marked variance between the allegations of the answer, protest, and testimony of witnesses produced by the respondents. Certain it is that there was a broad,

unobstructed, navigable sheet of water where the collision occurred, and nothing short of the grossest negligence on the part of those having charge of the steamer could have rendered a collision possible. Even supposing it were true that the man at the schooner's wheel did port his helm immediately before the collision, and then ran away to save his life, would this relieve the steamer? It would, on the contrary, show how closely the steamer must have crowded upon the sailing vessel, propelled by a gentle breeze and holding her proper course. With a placid expanse of water, and a bright summer moon, there was nothing to prevent the steamer from going, if desired, five or six miles to the starboard of the schooner, or three miles to the larboard of her.—(See page 10 of record, E. C. Reed's cross-examination.)

But it is not true in fact that the man at the schooner's wheel did put her helm hard a-port (see testimony of Hankins, page 26 of record); the fact being, as also shown by the respondents' own testimony, that the man at her wheel, just as the collision occurred, to save his life, ran forward, and the schooner shot into the wind, thereby presenting her port side to the steamer's bow.—(See page 11 of record, E. C. Reed's cross-examination.)

The conversations testified to by the respondents' witnesses as had with the captain of the schooner and with the helmsman, after the collision, whereby it was attempted to prejudice the claims which it was anticipated would be made for reparation, are, to say the least, of doubtful propriety, and are, moreover, expressly denied. —(Pages 20 and 25 of record.)

The additional testimony taken by the respondents, after the decree against them in the district court, is not

in keeping with their other testimony, and is not, therefore, calculated to strengthen their case. The additional testimony of the libellants is, on the other hand, corroborative of their original proof, and fully vindicates the decree passed in their favor. The fact that the schooner was raised by wreckers *after* the decree had been passed, acting in their own or the interests of others, cannot defeat the claims of the libellants, to whom the vessel was a total loss. The testimony as to *value* of the schooner is certainly in favor of the libellants; and no good reason has been shown why the libellants should be deprived of the relief awarded to them by the district court.—(See Rhoads' testimony, page 26 of record.)

The counsel for the libellants, now appellants, will respectfully insist that the decree of the district court should not have been reversed, and will maintain in support of his position the following points:

In cases of collision between a steamer and a sailing vessel, the following well-established rules have again and again been enunciated by this honorable court:

1. The bare fact of the collision renders the steamer *prima facie* liable, and she can only relieve herself by showing that the accident was inevitable, so that no forethought or precaution on the part of the steamer could have prevented its occurrence, or that it was caused by the culpable negligence of the sailing vessel.

2. The changing of a vessel's course, when the peril is imminent, is not a blamable fault, because she was obliged to keep her course until a collision was inevitable.

3. That the steamer, *from the time* the vessel is seen, shall watch her course and movements with the highest diligence.

4. Even if the schooner was in fault, the steamer committed a far greater fault by suffering the vessels to get into such dangerous proximity, and, having furnished no excuse for such misconduct, the steamer is chargeable with all the damages resulting from the collision.

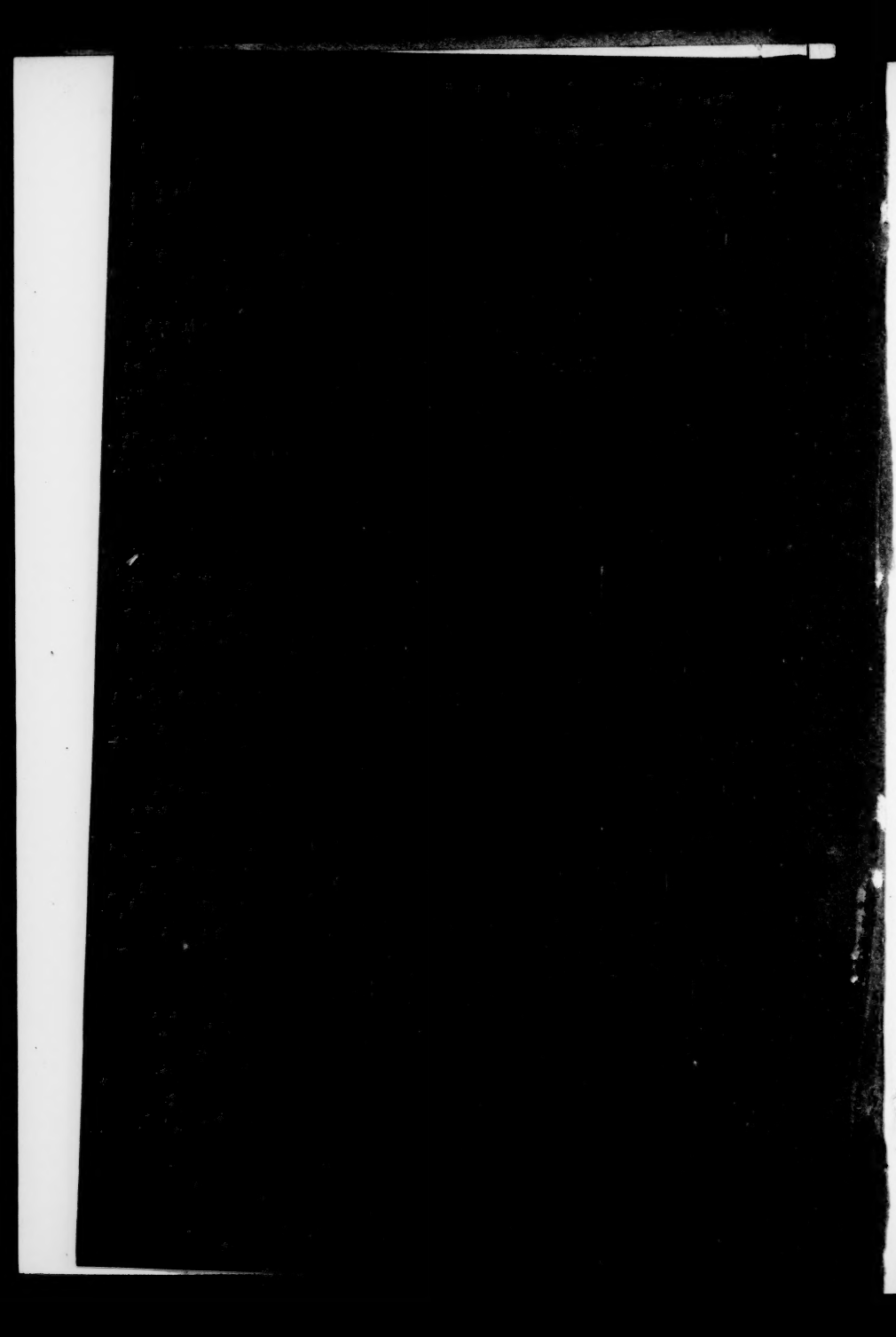
The following authorities, among a number, are referred to as fully illustrative of the above points, and containing all the law necessary to meet the requirements of this case.

13 Statutes at Large, pages 60–61.
N. Y. & Liv., &c., v. Rumball, 21 How'd, 383.
The Carroll, 8 Wall., 302.
The Fanny, 11 Wall., 240.
The Lucille, 15 Wall., 696.

Such being the law applicable to the facts in this case, a reversal of the decree of the Circuit Court for the District of Maryland is confidently asked for at the hands of this court.

WM. C. SCHLEY,
for Appellants.

The Commerce — 16. Mach. 34.



In the Supreme Court of the United States.

AN APPEAL FROM THE CIRCUIT COURT OF MARYLAND DISTRICT.

SCHOONER MARY H. BANKS *vs.* STEAMER FALCON.

BRIEF OF APPELLEES.

STATEMENT OF THE CASE.

The Schooner Mary H. Banks, of 186 tons burden, on a voyage from Boston to Baltimore, collided about midnight, 21st June, 1867, in the Chesapeake Bay, with the Steamer Falcon, of 671 tons burden, then on its way from Baltimore to Charleston, S. C., was cut half in two, and when the Steamer backed clear of her, sunk in five fathoms water. Nothing was saved, and she was subsequently raised by wreckers—the Messrs. Baker of Norfolk.

The owners of the Schooner and the seamen then libelled the Falcon, when the Circuit Court decreed to the former $9,000, as the value of the vessel, and to the seamen the sums stated in the decree This, on appeal to the Circuit Court, was reversed, and the libel dismissed with costs—when the present appeal to the Supreme Court was taken.

Referring to the Record, it will be seen that there are some facts about which there is no difference in the testimony: while in regard to others there are contradictions not unusual in these cases.

Thus, all the witnesses agree that it was a clear starlight and moonlight night. (Record, pp. 9-24.)

That the respective vessels were seen, each from the other's deck, when from three to four miles apart. (Record, pp. 9, 7.)

That they were sailing in opposite directions, the course of the Schooner being north by west, and the Steamer's course south by east, half east, (Record, pp. 10, 26,) the speed of each vessel being about the same. (Record, pp. 11, 12.)

That both vessels had look-outs, with the proper lights to port and starboard, the Steamer with a mast-head light. (Record, pp. 9, 24.)

That the wind was east north-east. (Record, p. 24.)

That the Schooner was cut nearly in half by the Steamer, when the collision took place. (Record, p. 24.) See also, the libel to this effect.

That she sunk in a few minutes, and was afterwards raised by wreckers. (Record, p. 26.)

Upon this statement of facts, there certainly was no more reason why the collision should take place, than there would have been had the vessels approached each other at mid-day. Carelessness or mismanagement, on one side or the other, could alone have caused the disaster.

The Captain of the Schooner swears that the Steamer ran into him while he was keeping his course, the Steamer never changing her's as she approached. (Record, p. 24.)

The Captain of the Steamer, on the contrary, swears that if the Schooner *had* kept her course the vessels would have gone clear; but that at the distance of two ships' length off, the Schooner ported her helm and crossed the Steamer's bows, when, although too late to save her, the Steamer was slowed down, and her helm was ported, in the hope of passing under the Schooner's stern; but the latter was run into as described. (Record, p. 10.)

Before going further, it is essential to a proper understanding, that the relative position of the vessels as they approached each other, should be determined; and here, also, the testimony is contradictory.

Although one of the witnesses, the Steamer's second mate, Robert Reed, says, (Record, p. 18,) that "the Schooner and the Steamer were sailing on parallel lines in opposite directions," yet the better proof is that of the respective Captains, which gives the Steamer's course at south by east half east, and the Schooner's north by west, the difference being half a point, or five degrees and five-eighths of a degree.

It becomes important, now, to ascertain on which side, as they approached each other, they were seen from their respective decks.

The Captain of the Steamer says, (Record, p. 9,) "I proceeded on my course, keeping the vessel on my *starboard* bow," which, of consequence, showed him the Schooner's green light. The helmsman of the Steamer says, (Record, p. 9,) he "saw the green light when he first saw her (the Schooner) down the bay," which put her on the Steamer's *starboard* bow; and Reed the Second Mate, says: "I saw the Schooner twenty minutes before the collision—I guess she was then five or six miles off. She had lights, I saw the green light—the *starboard* light." (Record, p. 18.)

These three witnesses all agree, then, that, as the vessels approached each other, the Schooner was on the Steamer's starboard bow.

On the other side, Eareckson, the lookout on the Schooner, swears, "I saw her mast-head light and a port (red) light." Hawkins, the helmsman of the Schooner says: "I saw the Steamer's port light from where I stood."

If these men are correct, they contradict the others, and the Schooner could only have been seen off the *port* bow of the Steamer.

The Captain of the Schooner does not refer to the lights; though if he saw, as he says he did, the Steamer coming "head to head," he must have seen *both* lights.

Which set of these witnesses is right, and to be believed?

Now the Captain of the Schooner swears, (Record, page 24) that neither the Steamer nor the Schooner changed their respective courses—and Eareckson, the Schooner's look-out, says (Record, page 8) "I could not see the Steamer changed her course;" so that if these last are to be believed, and both vessels maintained their respective courses unchanged, the Steamer would have struck the Schooner a *glancing blow*, at so small an angle as half a point, or $5\frac{6}{8}$ degrees; when, to have cut her half in two, aft the forerigging, was simply and physically impossible. In the libel it is asserted she was cut *in twain*. Such a result could only have been produced by a square, or nearly square, blow by the stem of the Steamer on the side of the Schooner—such a blow as was in fact struck.

But Reid, the Steamer's Captain, the mate and the helmsman, swear that just before the collision the Steamer's helm was *ported*, which would have lessened even the angle above mentioned; and the two vessels would have scraped by each other, even had they touched, provided their relative positions were

such as insisted on by the two witnesses of the libellant. (See accompanying Diagram.)

It being *impossible* then, for a collision, such as occurred, to have taken place had the Schooner been on the Steamer's *port* bow—it is demonstrated, that it must have been on the Steamer's *starboard bow* that the Schooner was seen approaching.

This being so, before the Steamer could have struck the Schooner square, or nearly so, on the port side, aft the fore chains, the Steamer must have gone round with her helm hard to starboard, making an arc of about 90 degrees, in order to strike a blow, *if the schooner*, as the witnesses for the Appellant swear, *kept her course of north by west;* and that the Steamer, whose course the same witness swears was not changed, made such a *detour* is not pretended. On the contrary, the Steamer's helm, as already said, was ported just before the collision. In truth, there was but one way in which the *port* side of the Schooner between the fore and main rigging could be presented for the blow that cut her in twain and wrecked her, which was by porting her helm and crossing the Steamer's bows; and this the witnesses for the Appellees swear she did.

Larkin, the helmsman of the Steamer, swears, (Record, p. 9,) "I saw the green light when I first saw her down the bay. When the word was given to port our helm I saw the red light."

Reid, the Steamer's Captain, says, "when the Schooner was within two ships lengths of the Steamer, he suddenly shut his green light out, and, by so doing, showing me his red light and making me aware of the fact that he had put her helm to port."

Reid, the Steamer's mate, says, "The cause of the collision was, that, they put the Schooner's helm aport and crossed our bow."

The circumstances relied on to corroborate this testimony are the courses the two vessels were steering, their relative positions, and the impossibility of a square blow at the angle at which they must have collided had the Schooner kept her course.

But, we have the declarations of the Schooner's Captain that her course was changed as sworn by appellees witnesses.

Reid, the Captain, says, (Record, p. 10,) "I asked him (the Schooner's Captain) the reason for acting in such a foolish manner, bringing on a collision quite unnecessary. The answer he made was "that he was taught, on approaching a vessel, never mind in what direction she was going, he must invariably port his helm."

Reid, the mate, says, (Record, p. 18,) "I overheard a conversation between the Captains of the Steamer and Schooner. Cap-

A. D.—The position of the vessels when colliding after the Steamer had ported her helm, assuming, according to Steamer's witnesses, that the Schooner was seen over the Steamer's starboard bow.

B.—The position which the Steamer would have occupied had her helm been starboarded: when the Schooner would have crushed into her side, as testified by the Reids.

C.—The position of the Steamer if seen from the Schooner according to Schooner's witnesses.

E.—Position shewing character of collision had both vessels kept their courses, according to Schooner's witnesses.

S.by E.½ East.

N.by W.

S.by E.½ E.

C

A

B

D

Wind. E.N.E.

E

tain Reid asked the Captain of the Schooner what he ported her helm for, he said he thought it was law."

Mr. Mordecai, a passenger, on board the Steamer at the time of the collision, says, (Record, p. 19,) "I went into the pilot house where the Captain of the Schooner was, and invited the Captain of the Schooner to go in also with me. When the Captain of the Schooner entered the pilot house Captain Reid of the Steamer accosted him, as nearly as I can recollect, in the following language, "For God's sake, Captain what did you mean by porting your helm, crossing my bow, and making a collision with me inevitable? The Captain of the Schooner replied, "That he ported his helm because he thought that the law required him to port his helm." Captain Reid then asked him if he did not know that the law required a sailing vessel to keep on her course and a Steamer to get out of her way, and if he supposed there was nobody on board the steamer and she was sailing herself. "The Captain appeared to be conscious of having committed an error at the time, and refrained from saying anything further on the subject."

Recognizing the well known rule of law which requires the Steamer to keep out of the way of the sailing vessel, which has only to keep on her course, yet it has been settled in this Court that although the duty of vessels propelled by steam is to keep clear of those moved by wind, yet the latter must not by changing their course put themselves in the way of the former, and so render ineffectual their movements to give the sailing vessels sufficient berth. *The Potomac*, 8 *Wallace*, 590.

Whether, however, it was the duty of the Captain of the Steamer to change her course depended upon the certainty that, had each vessel kept its course, there would have been no collision.

"It is not the law that a Steamer must change her course, or slacken her speed the instant she comes in sight of another vessel's light, no matter in what direction it may be." *The Scotia*, 14 *Wallace*, 182.

On this point the Captain, the mate and the helmsman of the Steamer agree. The Captain (Record, p. 9) says that he estimated at that time to pass two ship's length from the Schooner. The mate (Record, p. 18) says, "had they continued on their respective courses they would have passed about 400 feet apart," and Larkin, the helmsman, says, (Record, p. 9) "had the vessel kept the course they were on before the Schooner ported her helm they would have gone clear."

On the other side, the Captain of the Schooner (Record, p. 24)

says, that "the Steamer was coming apparently in an opposite direction, *head to head:*" the lookout says, (Record, p. 8) "the Steamer *steered right down for us;*" and the man at the wheel looking under the boom (Record, p. 2f) says, "I saw she was *coming into us.*"

That the witnesses for the Schooner are in error here is demonstrated by the fact already referred to that the vessel was cut nearly in two, which would have been impossible had both vessels kept their respective courses; unless, indeed, the testimony of the two last witnesses refers to the time after the Schooner's helm was put aport, and she was moving square across the Steamer's bows, when the Steamer would have seemed to them to be steering "right down for us," or "coming into us."

We submit, then, that there being no occasion for the Steamer to change its course, there was no obligation that it should do so—and this case, therefore, comes within the ruling in the cases of the *Potomac and the Scotia.* Using the language of the Court in the latter case, "Had it not been for the unfortunate order of the Master to port her helm, that cause could not have originated."

Nor can it be inferred here, as it was in the case of the *Lucille*, 15 *Wallace*, 679, that the Schooner put her helm to port, and steered eastward to avoid the danger of a collision that was then imminent; for the denial of the witnesses on board the Schooner of any change at any time of her course, precludes the idea, necessarily, that any apprehension of a collision influenced their conduct in this respect. The libel, prepared immediately after the accident, alleges that no such change was made, but that the Schooner steadily held her course until the moment the vessels came in contact.

That the course of the Schooner *was* changed, however, we think we have demonstrated.

But there is another reason why the decree of the Circuit Court should be affirmed.

The collision happened June 21, 1867. The libel states that the Schooner sunk in four minutes— the Captain swears to the same effect, adding that it was in five fathoms water—and that she was totally lost to the owners. (See Record, p. 24.) He further swears that "she was afterwards raised by Baker and Brothers, wreckers at Norfolk;" on whose account he does not

say. It is plain, however, that the owners gave themselves no trouble about her after she went down, choosing to abandon her without an effort to raise her and repair damages.

The depositions (pp. 21, 22 and 24,) showing that the vessel had been raised and repaired, were not before the District Court. They were not filed till more than a year after the decree of the District Judge, and there was nothing in the libel to indicate any thing but a total loss. The first deposition was that of the Schooner's captain, taken Nov. 11th, 1870, (p. 24.)

In April, 1870, we find her in Baltimore, and her condition then is sworn to, and she is valued at $7,500—(see Record, and the testimony of Sandford and Wilson, at pp. 20, 21, 22,)—and Sanford, a marine surveyor by occupation, swears at page 21 of the Record, that "to his mind she was a decidedly better vessel after the repairs than before the accident."

Under these circumstances it is insisted that there is no proof of expense incurred in raising or repairing her, or any other proof of damage, such as is required by the rules of admiralty as a foundation for a decree for damages in a case of collision.

The law in this connection is so well stated in the case of the *Baltimore*, 8 *Wallace*, 386-9, that it is unnecessary to do more than to refer to that case to support the views here expressed.

It is therefore respectfully insisted that the decree of the Circuit Court should be affirmed on two grounds:

1st. Because the collision was the fault of the Schooner.

2d. Because of the failure of the owners to prove the total loss to recover for which the libel was filed, or any other loss.

J. H. B. LATROBE,
S. T. WALLIS,
for Appellees.